

00882

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20543

FILE: **B-127474**DATE: **MAR 2 1977**MATTER OF: **Non-pay Status Pay for Holiday Not Worked****DIGEST:**

Employee in a pay status for the day either immediately preceding or succeeding a holiday is entitled to regular pay for the holiday regardless of whether he is in an authorized leave-without-pay status or in an absent-without-leave status for the corresponding day immediately succeeding or preceding the holiday. 13 Comp. Gen. 207 (1934) overruled. 13 Comp. Gen. 206 (1934), 16 id. 807 (1937), 18 id. 206 (1938), and 45 id. 291 (1965) modified.

The Chairman of the Civil Service Commission, by letter dated March 31, 1976, has requested a clarification of our holdings in 16 Comp. Gen. 806 (1937) and in 45 Comp. Gen. 291 (1965) insofar as those decisions pertain to the entitlement to compensation of regular employees who are absent without leave or on authorized leave without pay either the day before or the day following a holiday. He suggests that inconsistencies between the two holdings may account for inconsistencies in the holiday pay administration of different agencies. Specifically, he points out that the Department of the Navy denies holiday pay to an employee who is absent without leave either the day before or the day after a holiday, while the Department of the Army denies holiday pay only when the unauthorized leave of absence occurs immediately prior to the holiday.

We are asked to address the question of whether an employee who is absent without leave on the workday immediately before the holiday (and who has not been ordered to work on that holiday), but who is in a pay status on the first workday after the holiday, is entitled to straight-time pay for the holiday. Conversely, the Chairman asks whether an employee who is absent without leave on the workday immediately after a holiday but in a pay status on the workday immediately before a holiday, is entitled to straight-time pay for the holiday. He further inquires whether a different result

PUBLISHED DECISION
56 Comp. Gen.

B-127474

would occur in either of the above situations if the employee is on authorized leave without pay instead of being absent without leave.

The language of 45 Comp. Gen. 291, supra, to which the Chairman refers is the statement at page 292 that "no authority exists for administrative denial of pay for holiday when in ordinary circumstances an employee has been in a pay status before or after a holiday." He suggests that that statement is at odds with the following language from 16 Comp. Gen. 807, supra:

"Where, however, the leave without pay is taken without obtaining appropriate authorization prior to the taking of such leave, the established rule is that, in the absence of a statute specifically providing otherwise, the employee is considered in a non-pay status for the entire period during which he absents himself from duty, and in such cases deduction of pay is required for all days coming within that period, including Sundays and holidays irrespective of whether occurring immediately prior to the day on which the employee reports for duty."

Unlike the above excerpt from 16 Comp. Gen. 807, the above-quoted statement from 45 Comp. Gen. 291 was intended to refer to employees in a pay status either immediately before or after a holiday and in an authorized leave-without-pay status on corresponding days immediately after or before a holiday. Moreover, that statement is generally consistent with the following additional statement from 16 Comp. Gen. 807 in reference to employees in an authorized leave-without-pay status immediately before a holiday:

"Neither the uniform leave act of March 14, 1936, 49 Stat. 1161, nor the regulations issued in pursuance thereof (Executive Order No. 7409 dated July 9, 1936), prescribes any rule for applying in the case of leave without pay--whether or not such leave be authorized in advance. The general rule, however, is that employees absent on leave without

E-127474

pay granted in advance for a definite period and who report for duty at the beginning of the duty day next following the expiration of such definite period, are entitled to compensation for the Sundays and holidays occurring between the expiration of the leave granted and the day of actual reporting for duty, 13 Comp. Gen. 206 * * *."

We recognize that the further statement in 18 Comp. Gen. 807 that, notwithstanding the general rule quoted directly above, pay for holidays may be denied by administrative regulation under our holding in 13 Comp. Gen. 207 (1934), is inconsistent with our holding to the contrary in 45 Comp. Gen. 291. For this reason 13 Comp. Gen. 207 is hereby overruled.

While we do not view our decisions in 18 Comp. Gen. 807 and in 45 Comp. Gen. 291 as inconsistent, we are in agreement with the Chairman's suggestion that the subject of entitlement to pay for holidays immediately preceded or succeeded by a period of absence in a non-pay status is in need of clarification.

With regard to pay for holidays, 5 U. S. C. § 6104 (1970) provides:

"§ 6104. Holidays; daily, hourly, and piece-work basis employees.

"When a regular employee as defined by section 2105 of this title or an individual employed regularly by the government of the District of Columbia, whose pay is fixed at a daily or hourly rate, or on a piece-work basis, is relieved or prevented from working on a day--

"(1) on which agencies are closed by Executive order, or, for individuals employed by the government of the District of Columbia, by order of the Commissioner;

"(2) by administrative order under regulations issued by the President, or

B-127474

for individuals employed by the government of the District of Columbia, by the District of Columbia Council; or

"(3) solely because of the occurrence of a legal public holiday under section 6103 of this title, or a day declared a holiday by Federal statute, Executive order, or, for individuals employed by the government of the District of Columbia, by order of the Commissioner;

he is entitled to the same pay for that day as for a day on which an ordinary day's work is performed."

This same concept has long been applied to monthly and per annum employees. See 45 Comp. Gen. 291, 292.

Under the predecessor statute, as adopted in its earliest form by House Joint Resolution 551, June 27, 1938, we held that entitlement to pay for holidays is mandatory only where the employee is actually on the job immediately before and after the holiday in question. Only in such situation is the presumption clear that the employee was "relieved or prevented" from working a holiday solely because of the occurrence of the holiday. See 18 Comp. Gen. 206 (1938).

Our decision in 45 Comp. Gen. 291, *supra*, established a further category of circumstances in which it is to be presumed that an employee is "relieved or prevented" from working on a holiday solely because of the occurrence of such holiday. In holding that there is no authority for denial of pay for a holiday when, in ordinary circumstances, an employee has been in a pay status before or after a holiday, we extended the presumption of 18 Comp. Gen. 206, *supra*, to employees on authorized leaves of absence either immediately before or immediately after a holiday.

Those two decisions left agencies the discretion to indulge what presumption they reasonably might with respect to whether an employee in an absent-without-leave status immediately before or after a holiday is "relieved or prevented" from working

B-127474

solely by the occurrence of that holiday. The result has been that different agencies have imposed different presumptions and, as in the cases of the Departments of the Army and Navy cited by the Chairman, have different instructions regarding pay entitlement for holidays.

Since our decisions permit these differing results, we have further considered the matter. We now believe that it is as valid to presume that an employee who was absent without leave the day before a holiday would have been present on the holiday as it is to presume that he would have been present on the holiday when he is absent without leave on the day after the holiday.)

For this reason, and in the interest of uniformity and administrative convenience, we believe the rule stated in 45 Comp. Gen. 291, supra, should apply to employees in an absent-without-leave status immediately before or after a holiday as well as to employees on authorized leave without pay immediately before or after a holiday. Thus, an employee in a pay status for either the workday preceding a holiday or the workday succeeding a holiday is entitled to straight-time pay for the holiday, without regard to whether he is in an authorized leave-without-pay status or an absent-without-leave status for the corresponding day immediately succeeding or preceding such holiday. Our decisions in 13 Comp. Gen. 206, supra; 16 id. 807, supra; 18 Comp. Gen. 206, supra; and 45 Comp. Gen. 291, supra, are modified accordingly.

This holding is consistent with the following temporary instruction contained in the attachment to Federal Personnel Manual Bulletin 610-25, dated December 15, 1975, pertaining to Executive Order 11891 which excused employees from duty on Friday, December 26, 1975:

"When an employee is in a nonpay status either before or after his day off, as determined above, he is entitled to pay for the day off even though not worked, but if he is in a nonpay status before and after his day off, he is not entitled to pay for that day. (For example, an employee with a Monday through Friday workweek who is on leave without pay Wednesday afternoon, December 24, 1975, and is in a pay status at the beginning of work Monday morning, December 29, 1975, would be entitled to pay for both December 25, and December 26.)"

B-127474

As the above-quoted instruction fairly reflects the holding of this decision, we recommend the Civil Service Commission's amendment of its regulations to include a similar provision on a permanent basis.

R. F. KELLER

Acting Comptroller General
of the United States